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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:
 JOHN VISSER and GRACE VISSER
 Debtors-In-Possession.

Lead Case No. 12-17310-A-11
 (Proposed)

Chapter 11
 DC No.: KDG-14

(Proposed to be) jointly administered
 with:

In re:
 JOHN VISSER DAIRY, INC.,
 Debtor-In-Possession.

Case No. 12-17311-A-11
 DC No.: KDG-14

In re:
 VISSER RANCH TRANSPORT, INC.,
 Debtor-In-Possession.

Case No. 12-17312-A-11
 DC No.: KDG-14

In re:
 DAIRYMAN'S CALF RANCH, INC.,
 Debtor-In-Possession.

Case No. 12-17313-A-11
 DC No.: KDG-14

In re:
 LARIAT DAIRY, INC.,
 Debtor-In-Possession.

Case No. 12-17314-A-11
 DC No.: KDG-14

In re:

GRACELAND DAIRY, INC.,

Debtor-In-Possession.

Case No. 12-17315-A-11
DC No.: KDG-14

In re:

VISSER RANCH, INC.,

Debtor-In-Possession.

Case No. 12-17316-A-11
DC No.: KDG-14

In re:

VISSER FARMS,

Debtor-In-Possession.

Case No. 12-17336-A-11
DC No.: KDG-14

■ Affects all Debtors

- ☐ Affects John Visser and Grace Visser only
- ☐ Affects John Visser Dairy, Inc., only
- ☐ Affects Visser Ranch Transport, Inc., only
- ☐ Affects Dairyman's Calf Ranch, Inc., only
- ☐ Affects Lariat Dairy, Inc., only
- ☐ Affects Graceland Dairy, Inc., only
- ☐ Affects Visser Ranch, Inc., only
- ☐ Affects Visser Farms, only

Date: October 3, 2012

Time: 1:30 p.m.

**Place: United States Bankruptcy
2500 Tulare Street, 5th Floor
Department A, Courtroom 11
Fresno, California**

Judge: Honorable Fredrick E. Clement

**MOTION BY DEBTORS FOR ORDER AUTHORIZING
DEBTORS' EMPLOYMENT OF
GLASSRATNER ADVISORY & CAPITAL GROUP, LLC**

TO THE HONORABLE FREDRICK E. CLEMENT, UNITED STATES BANKRUPTCY
JUDGE:

John and Grace Visser ("the Vissers"), and John Visser Dairy, Inc., Graceland Dairy, Inc., Visser Ranch, Inc., Visser Ranch Transport, Inc., Lariat Dairy, Inc., Dairyman's Calf Ranch, Inc., and Visser Farms (collectively "the Visser Entities," the Vissers and the Visser

1 Entities are referred to as “Debtors”) move the Bankruptcy Court for an Order Authorizing
2 Debtors’ Employment of Glass Ratner as their financial advisors and debt restructuring
3 specialists and represent as follows:

4 **I. Introduction**

5 1. Debtors are related farming entities. They seek to employ the financial advisory
6 firm of GlassRatner Advisory & Capital Group, LLC (“GlassRatner”), 19800 MacArthur
7 Blvd., Irvine, California, as their financial advisors and management consultants.

8 **II. Jurisdiction**

9 2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.
10 This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of the Debtor’s Chapter 11 case
11 and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

12 3. The basis for the relief requested in this Motion is 11 U.S.C. § 327.

13 **III. Background of Debtor and events leading up to filing Chapter 11**

14 4. John and Grace Visser are individuals residing in Visalia, California. The
15 Vissers commenced their Chapter 11 case by filing a Voluntary Petition under Chapter 11 of
16 the Bankruptcy Code on August 24, 2012. The Vissers are the settlors, trustees, and
17 beneficiaries of the “John and Grace Visser Revocable Family Trust” (“the Vissers’ Trust”).
18 The Trust owns 100 percent of the outstanding shares of the Visser Entities (except for Visser
19 Farms) including John Visser Dairy, Inc., Graceland Dairy, Inc., Visser Ranch, Inc., Visser
20 Ranch Transport, Inc., Lariat Dairy, Inc., and Dairyman’s Calf Ranch, Inc. John and Grace
21 Visser are the sole partners of Visser Farms. The Trust also owns the real property on which
22 the Visser Entities operate.

23 5. John Visser Dairy, Inc., is a California corporation (taxed under subchapter “S”)
24 formed in late 2005. It operates in Hanford, California, as a dairy with a milking herd of about
25 3,600 cows and total livestock of about 7,000 animals. John Visser Dairy uses 28 persons
26 employed by a farm labor contractor, Cream of the Crop, and owns its dairy herd and operating
27 equipment. John Visser Dairy leases the facility on which it operates from the Vissers’ Trust.
28 John Visser Dairy filed a Voluntary Petition under Chapter 11 on August 24, 2012.

1 6. Graceland Dairy, Inc., is a California corporation (taxed under subchapter "S")
2 formed in late 2007. It operates in Tulare, California, as a dairy with a milking herd of about
3 3,000 cows and total livestock of about 6,000 animals. Graceland Dairy uses 26 persons
4 employed by Cream of the Crop and owns its dairy herd and operating equipment. Graceland
5 Dairy leases the facility on which it operates from the Vissers' Trust. It filed a Voluntary
6 Petition under Chapter 11 on August 24, 2012.

7 7. Visser Ranch, Inc., is a California corporation (taxed under subchapter "S")
8 formed in late 2005. It operates in Strathmore, California, as a calf ranch raising heifers and
9 steers for, among others, John Visser Dairy and Graceland Dairy. Visser Ranch employs 20
10 persons directly and uses 36 persons employed by Cream of the Crop and owns about 6,000
11 head of livestock and operating equipment. Visser Ranch leases the facility on which it
12 operates from the Vissers' Trust. It filed a Voluntary Petition under Chapter 11 on August 24,
13 2012.

14 8. Visser Ranch Transport, Inc., is a California corporation (taxed under
15 subchapter "S") formed in 1991. It operates in Tulare, California, as a trucking company
16 hauling livestock, milk, and feed for the other Visser Entities. Visser Ranch Transport uses 7
17 persons employed by Cream of the Crop and owns its own trucks and equipment. It filed a
18 Voluntary Petition under Chapter 11 on August 24, 2012.

19 9. Lariat Dairy, Inc., is a Texas corporation (taxed under subchapter "S") formed
20 in late 2005. It operates in Muleshoe, Texas, as a dairy with a milking herd of about 6,800
21 cows and total livestock of about 12,000 animals. Lariat employs 56 persons directly and
22 owns its dairy herd and operating equipment. Lariat Dairy leases the facility on which it
23 operates from the Vissers' Trust. Lariat Dairy filed a Voluntary Petition under Chapter 11 on
24 August 24, 2012 in the Eastern District of California.

25 10. Dairyman's Calf Ranch, Inc., is a Texas corporation (taxed under subchapter
26 "S") formed in late 2005. It operates in Muleshoe, Texas, as a calf ranch raising heifers and
27 steers for, among others, Lariat Dairy. Dairyman's Calf Ranch employs 19 persons directly
28 and owns about 3,200 head of livestock and operating equipment. Dairyman's Calf Ranch

1 leases the facility on which it operates from the Vissers' Trust. Dairyman's Calf Ranch filed a
2 Voluntary Petition under Chapter 11 on August 24, 2012 in the Eastern District of California.

3 11. Visser Farms is a California general partnership formed in 2006. It operates in
4 Strathmore, California growing almonds and cherries and share-cropping walnuts. It operates
5 in Texas growing wheat. Visser Farms owns its operating equipment. Visser Farms leases the
6 farmland from the Vissers' Trust. Visser Farms filed a Voluntary Petition under Chapter 11 on
7 August 26, 2012.

8 12. All of the Visser Entities are headquartered in Strathmore, California. John
9 Visser and his son-in-law Brian Schaap oversee the operations of all of the Visser Entities.
10 Diana Timms is the controller for all of the Visser Entities.

11 **A. The Vissers and the Visser Entities have significant debts owed to each other**

12 13. The Visser Entities share management, employees, and equipment. They use
13 combined financial statements. They buy and sell significant amounts of goods and services to
14 each other.

15 14. The Vissers and the Visser Entities maintain "Zero Balance" bank accounts,
16 whereby cash moves freely between their accounts (on a daily basis) in order to lower the
17 amount of cash they need to borrow from institutional lenders. This results in complex and
18 ever-changing intercompany receivables, as reflected below.

19 15. The Vissers, through their Trust, owe significant amounts of money to Visser
20 Ranch Transportation, Lariat Dairy, Dairyman's Calf Ranch, and Visser Farms.

21 16. John Visser Dairy owes significant amounts of money to Visser Ranch, the
22 Vissers' Trust, Lariat Dairy, and Graceland Dairy.

23 17. Graceland Dairy owes significant amounts of money to Visser Ranch and the
24 Vissers' Trust.

25 18. Visser Ranch owes significant amounts of money to the Vissers' Trust, John
26 Visser Dairy, Lariat Dairy, Dairyman's Calf Ranch, and Visser Farms.

27 19. Visser Ranch Transportation owes significant amounts of money to Visser
28 Ranch and John Visser Dairy.

1 20. Lariat Dairy owes significant amounts of money to Visser Ranch, Visser Ranch
2 Transportation, the Vissers' Trust, John Visser Dairy, Graceland Dairy, and Dairyman's Calf
3 Ranch.

4 21. Dairyman's Calf Ranch owes significant amounts of money to Visser Ranch,
5 the Vissers' Trust, and John Visser Dairy.

6 22. Visser Farms owes a significant amount of money to the Vissers' Trust.

7 23. Additionally, the Visser Entities all operate on real property owned by the
8 Vissers' Trust, and all pay rent to the Trust.

9 **B. The Vissers and the Visser Entities have common major creditors**

10 24. The Vissers' Trust and several of the Visser Entities, including John Visser
11 Dairy, Graceland Dairy, and Visser Ranch, are borrowers on a \$32.7 million secured promissory
12 note in favor of Farm Credit West, FCLA ("Farm Credit West Note"). The Farm Credit West
13 Note is secured by a first deed of trust against the real property owned by the Vissers' Trust.

14 25. The Vissers and the Visser Entities are all borrowers on Wells Fargo Bank loans
15 of approximately \$64.5 million. The Wells Fargo loans are secured by substantially all of the
16 Vissers' and the Visser Entities' assets, including second and third deeds of trust against the
17 real property (as well as first deeds of trust against certain real property).

18 26. Debtors' businesses are dairy industry businesses. The dairy industry has been
19 struggling through the downturn in the national and world economy. Debtors fell behind in
20 their payments to Wells Fargo Bank. Debtors loans owed to Wells Fargo Bank became all due
21 and payable. However, Debtors were not able to refinance the debt owed to Wells Fargo Bank
22 when it came due because of the depressed real estate and dairy real estate. Debtors and Wells
23 Fargo Bank came to a one-year forbearance agreement that expired in December 2011. Debtor
24 and Wells Fargo Bank were unable to agree on the terms of continuing financing by Wells
25 Fargo Bank.

26 27. In July 2012, Wells Fargo Bank sent demand letters to the creameries and sales
27 yards with whom Debtors do business demanding that the bank be paid moneys owed to
28 Debtors. The creameries and sales yards complied with the demand letters depriving Debtors

1 of the money necessary to operate their businesses. Therefore, Debtors were prompted to file
2 their Chapter 11 cases and attempt to reorganize under the protection of the Bankruptcy Code.

3 **IV. Debtors seek joint employment of Glass Ratner**

4 28. Debtors wish to employ GlassRatner, 19800 MacArthur Blvd., Irvine,
5 California, as their financial advisors during the bankruptcy proceedings herein.

6 29. Debtors selected GlassRatner to act as their financial advisors for the following
7 reasons:

- 8 a. GlassRatner is experienced and qualified to perform the consulting
9 services required by Debtors and their Chapter 11 estates: a copy of
10 Managing Director George Demos' Curriculum Vitae is attached as
11 Exhibit "B" to the supporting Exhibits;
- 12 b. GlassRatner is familiar with the nature and complexities involved in the
13 operation of the business conducted by Debtors; and
- 14 c. Debtors believe that Glass Ratner is qualified to act as their financial
15 advisors.

16 30. The professional services that GlassRatner is to render include: (a) assisting
17 with the assessment, formulation or implementation of financial restructuring, (b) reviewing,
18 evaluating, and participating in various negotiations with creditors, (c) preparing the Real
19 Property Questionnaire, and (d) otherwise assisting in such matters as will aid in
20 accomplishing the foregoing. The services to be rendered by GlassRatner are more fully
21 described in the engagement letters dated August 22, 2012, and August 27, 2012 attached as
22 Exhibit "A" to the *Exhibits in Support of Motion by Debtors for Order Authorizing Debtors'*
23 *Employment of GlassRatner Advisory & Capital Group, LLC*. GlassRatner has been
24 performing all financial advisory services required by Debtors in these proceedings since
25 Debtors filed their Voluntary Petitions.

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1 **A. Disclosure of adverse interests and connections**

2 i. Interests

3 31. GlassRatner has no interest or represents no interest adverse to Debtors or their
4 estates in any of the matters upon which it will be engaged and Debtors believe that the
5 employment of GlassRatner will be in the best interest of their estate.

6 ii. Connections

7 32. GlassRatner has a connection with Debtors from its prior employment by
8 Debtors and its current employment with Debtors on the terms described below. GlassRatner's
9 employment by Debtors is disclosed in Exhibit "A" attached to the concurrently-filed
10 *Declaration of George Demos in Support of Motion by Debtors for Order Authorizing*
11 *Debtors' Employment of GlassRatner Advisory & Capital Group, LLC*. GlassRatner has
12 reviewed its connections with Debtors, and believes that all connections with Debtors have
13 been disclosed. Additionally, GlassRatner does not believe that this connection would
14 interfere with its financial advisory duties to Debtors and their estate.

15 33. GlassRatner has no connections with Debtors' creditors, any other party in
16 interest, or their attorneys and accountants, the United States Trustee, or any person employed
17 in the Office of the United States Trustee except as described in Exhibit "A" attached to the
18 concurrently filed *Declaration of George Demos*.

19 34. GlassRatner will not represent Debtors in their Chapter 11 case if the
20 Bankruptcy Court determines that a conflict of interest exists which disqualifies Glass Ratner
21 from employment by Debtors. GlassRatner will withdraw as the financial advisors for
22 Debtors if an actual conflict of interest arises during the administration of Debtors' Chapter 11
23 cases.

24 **V. Points and Authorities: the court should approve the employment of Glass Ratner.**

25 35. The employment of professionals by a debtor-in-possession in a Chapter 11
26 case is governed by 11 USC Sections 327(a) and (c) which provide:

27 (a) Except as otherwise provided in this section, the
28 trustee, with the court's approval, may employ one or more
 attorneys, accountants, appraisers, auctioneers, or other
 professional persons, that do not hold or represent an interest

adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

.....

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

11 U.S.C. Sections 327(a) and (c), emphasis added.

A. GlassRatner does not hold an interest adverse to the estate

36. As set forth in the concurrently-filed *Declaration of George Demos*, GlassRatner does not hold an interest adverse to Debtors or their estates in any of the matters upon which it is to be engaged. Under *In re AFI Holding, Inc.*, 530 F.3d 832 (9th Cir., 2008), an "adverse interest" is (1) possession or assertion of an economic interest that would tend to lessen the value of the estate; (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate. 530 F.3d at 845.

37. GlassRatner does not assert an economic interest against the estate that would lessen the value of the estate to creditors. It does not possess or assert an economic interest to which the estate is a rival claimant. It does not have a predisposition against the estate that would lessen its vigorous representation of the estate. Thus, GlassRatner does not *hold* an interest adverse to the estates.

38. GlassRatner, or its employees, have not served as an examiner in these cases.

B. GlassRatner does not represent an interest adverse to the estates

39. Neither does GlassRatner represent an interest adverse to the estates. The potential adverse interest would be the intercompany receivables owed between and among the Vissers and various Visser Entities ("the Debt"). Although certain Visser Entities are creditors of other Visser Entities, those interests do not lessen the value of their respective estates

1 because all of the Debtors contemplate filing Plans of Reorganization that will provide for
 2 maximum repayment of all allowed claims. Additionally, the Debt, to the extent it is not just
 3 “paper” debt, is undisputed and liquidated. For those reasons, GlassRatner will not need to be
 4 employed by any of the Debtors regarding the Debt. Finally, Debtors have unity of interest
 5 and the goal of paying all creditors in full. This necessarily means that GlassRatner is not
 6 employed by a party with a bias against any of the estates. Because repayment of the debt
 7 owed to both Wells Fargo and Farm Credit West is cross-collateralized, the eight debtors are
 8 best served by all of them succeeding. For those reasons, GlassRatner’s employment by each
 9 of the Debtors does not constitute *representing* an interest adverse to either estate.

10 **C. GlassRatner is disinterested**

11 40. The term “disinterested person” is defined as a person who:

12 (A) is not a creditor, an equity security holder, or an
 13 insider;

14 (B) is not and was not, within 2 years before the date of the
 15 filing of the petition, a director, officer, or employee of the debtor;
 16 and

17 (C) does not have an interest materially adverse to the
 18 interest of the estate or of any class of creditors or equity security
 19 holders, by reason of any direct or indirect relationship to,
 20 connection with, or interest in, the debtor, or for any other reason.

21 11 U.S.C. §101(14).

22 41. No facts indicate that GlassRatner falls within (14)(A) or (B). Subsection (C)
 23 requires an analysis similar to the analysis of *In re AFI Holding, Inc., supra*. There, the Court
 24 examined whether the firm would be adverse to the estate, debtor, or creditors by virtue of
 25 some relationship with or connection to the debtor. GlassRatner does not believe that there are
 26 any facts present indicating that GlassRatner has an interest materially adverse to the estates.
 27 For those reasons, GlassRatner is a disinterested person as defined by Section 101(14).

28 **D. GlassRatner has no actual conflict of interest**

42. 11 U.S.C. Section 327(c) provides:

(c) In a case under chapter 7, 12, or 11 of this title, a
 person is not disqualified for employment under this section
solely because of such person’s employment by or
representation of a creditor, unless there is objection by another

1 creditor or the United States trustee, in which case the court shall
 2 disapprove such employment if there is an actual conflict of
interest.

3 43. GlassRatner believes that the facts show that it does not have an actual conflict
 4 of interest. An actual conflict of interest would require employment—regarding the Debt—by
 5 the related debtors. Because no employment regarding the Debt is contemplated, there is, at
 6 most, a *potential* conflict. The Code is clear that only an actual conflict of interest will
 7 disqualify a person from employment by related debtors.

8 **E. Employment by debtors in related cases is not prohibited, and the court should**
 9 **appropriately consider the time and cost efficiencies resulting from joint**
employment.

10 44. *Collier on Bankruptcy* urges a cautious approach to disqualification in multi-
 11 debtor cases. Collier notes that the risks presented by joint representation increase when
 12 factors not present here are encountered: (a) the debtors have separate creditors, (b) the debtors
 13 have different officers, (c) the debtors have separate directors (d) the debtors have separate
 14 ownership interests and (e) there are significant intercompany claims. 3 Collier on
 15 Bankruptcy, ¶ 327.04[5](15th ed. Rev. 2007). Collier notes that it is more reasoned for courts
 16 to examine the factual circumstances surrounding the representation to determine whether it is
 17 appropriate. See ¶ 327.04[5] [a].

18 45. Citing *BH & P, Inc.*, 949 F.2d 1300, 1310 (3rd Cir. 1991), Collier advocates a
 19 flexible case-by-case approach governing conflict of interests applicable to professionals in
 20 jointly administered bankruptcy cases involving interdebtor claims. The court is required to
 21 analyze the specific facts of the case to determine whether efficiency and economy [which may
 22 favor multiple representation] must yield to competing concerns affecting fairness to all parties
 23 involved and protection of integrity of the bankruptcy process. Factors to be considered
 24 include, but are not limited to, the nature of the disclosure of conflicts made at the time of
 25 appointment, whether the interests of related estates are parallel or conflicting, and the nature
 26 of the interdebtor claims made. Collier, *supra* at ¶ 327.04[5] [a]; 949 F.2d at 1316, 17.

27 ///

28 ///

1 46. The *BH & P* court wrote:

2 As we have said, denomination of a conflict as
3 “potential” or “actual” and the decision concerning whether to
4 disqualify a professional based upon that determination in
5 situations not yet rising to the level of an actual conflict are
6 matters committed to the bankruptcy court's sound exercise of
7 discretion. In order to ensure proper review in these cases, those
8 factors underlying the exercise of discretion “must be factually
9 substantiated upon the evidentiary record.” *Id.*

10 47. Applying the *BH & P* factors demonstrates that employment of GlassRatner by
11 each of the Debtors is appropriate. Full disclosure has been made to all parties in interest in all
12 eight estates. Debtors’ interests are certainly parallel. Debtors’ ownership and management
13 are common.

14 48. As noted, the only potential conflict regards the Debt. That debt is liquidated
15 and undisputed. No services regarding the Debt are required. Repayment of the debts owed to
16 Wells Fargo and Farm Credit West by Debtors is cross-collateralized. Thus, there is unity of
17 interest and a parallel path for the related Debtors. That path is best taken with GlassRatner as
18 financial advisors for all eight debtors.

19 49. Debtors believe that GlassRatner should not be disqualified from representing
20 Debtors unless an actual conflict of interest arises. GlassRatner will withdraw as the financial
21 advisors for Debtors if an actual conflict of interest arises during the administration of Debtors’
22 Chapter 11 case. Additionally, the Court will retain jurisdiction over GlassRatner’s
23 employment by Debtors at all times during the administration of the Chapter 11 cases to
24 determine if an actual conflict of interest exists or has arisen. See *In re Westwood Shake &*
25 *Shingle*, 971 F.2d 387, 390 (9th Cir. 1992) and *In re Plaza Hotel*, 111 B.R. 882, 891 (Bankr.
26 E.D.Cal. 1990).

27 **VI. Miscellaneous matters related to compensation of Glass Ratner**

28 50. Compensation paid to GlassRatner will be based on their normal and usual
29 hourly billing rates as described below. Any compensation paid to GlassRatner from property
30 of the estate will only be paid after application and approval by the Court.

31 51. The normal and usual hourly billing rates charged by GlassRatner are:

- 1 • Kerry Krisher \$450.00 per hour
- 2 • George Demos \$225.00 per hour
- 3 • Michael Shenk \$225.00 per hour
- 4 • Other Consultants \$175.00–\$350.00 per hour

5 52. Debtors paid pre-petition retainers to GlassRatner in the total amount of
6 \$65,000.00.

7 53. Before Debtors' petition date, GlassRatner applied \$21,330.00 to fees and costs
8 incurred pre-petition, leaving a balance on the Vissers' petition date of \$43,670.00. The
9 retainers will be used to pay fees and costs incurred by GlassRatner in connection with its
10 representation of Debtors after application and approval by the Bankruptcy Court. GlassRatner
11 claims a lien against the retainers which is perfected by possession under California law.
12 GlassRatner asks the Court to approve monthly payment procedures.

13 VII. Conclusion

14 54. Debtors request that they be authorized to employ GlassRatner as their financial
15 advisors to render services in the areas described above with compensation to be paid as
16 administrative expenses in such amounts as the Court may determine and allow.

17 WHEREFORE, Debtors pray that the Court make and enter its order as follows:

- 18 1. *The Motion by Debtors for Order Authorizing Debtors' Employment of*
19 *GlassRatner Advisory & Capital Group, LLC* be granted;
- 20 2. The employment of Glass Ratner be approved, retroactive to the Petition Dates,
21 and,
- 22 3. For such other relief as the court deems just and proper.

23 Date: September 12, 2012

KLEIN, DeNATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP

24 By 

25
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